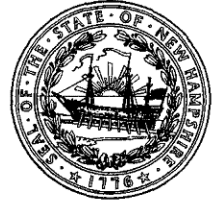




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

March 8, 2005

Lochmere Golf and Country Club, Inc.
Attn: Gerald Chaille
PO Box 262
Lochmere, NH 03252

Re: Docket No. AF 05-016 – Lochmere Golf and Country Club, Inc.

Dear Mr. Chaille:

Enclosed for your records is a copy of the Administrative Fine by Consent Agreement in the above-captioned matter executed by Harry T. Stewart, P.E., Water Division Director, and accepted by Commissioner Michael P. Nolin on March 3, 2005. On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely
COPY
Michael P. Schafani,
Legal Assistant

cc: Harry T. Stewart, P.E., Director, DES Water Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
Mary Ann Tilton, DES WD/WET
Karla McManus, DES WD/WET
DES Public Information Officer



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Lochmere Golf and Country Club, Inc.
Attn: Gerald Chaille
PO Box 262
Lochmere, NH 03252

Re: Wetland File 2002-1704
75 Patricia Ann Dr., Tilton

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 05-016

I. INTRODUCTION

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Lochmere Golf and Country Club, Inc, pursuant to RSA 482-A:13. This Administrative Fine by Consent is effective upon signature of all parties.

II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is a duly constituted administrative agency of the state of New Hampshire, having its main office at 29 Hazen Drive, Concord, NH 03302-0095.
2. Lochmere Golf and Country Club, Inc. ("Lochmere") is a New Hampshire corporation registered to do business in New Hampshire having a mailing address of PO Box 262, Lochmere, NH 03252.

III. BACKGROUND

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

4. Gerald and Anne Marie Chaille are the owners of land located at 75 Patricia Ann Drive, Tilton, NH, more particularly located on the Tilton Tax maps as Map R-11, Lot 1-A ["the Property"].
5. On January 21, 2003, DES issued a permit to Gerald Chaille, as the owner of the Lochmere Golf and Country Club, Inc. ["Wetlands Permit"]. The Wetlands Permit authorized the filling of 9,339 square feet of wetlands and the relocation of 387 linear feet of intermittent stream to extend the width of existing fairway 15.
6. The Wetlands Permit contained the following relevant conditions:
 1. All work shall be done in accordance with plans by Schauer Environmental Consultants, dated July 11, 2002, as received by DES on July 17, 2002 and plans dated January 2, 2003 and received by DES January 3, 2003.
 2. There shall be no further alteration of wetlands for lot development, driveways, culverts, or for septic setback.
 6. Appropriate siltation/erosion/turbidity controls shall be in place prior to construction, shall be maintained during construction, and shall remain until the area is stabilized. Silt fence(s) must be removed once the area is stabilized.
 7. Appropriate turbidity controls shall be installed prior to construction, shall be maintained during construction such that no turbidity escapes the immediate dredge area, and shall remain until suspended particles have settled and the water at the work site has returned to normal clarity.
 8. Dredged material shall be placed out of any area that is within the jurisdiction of the DES Wetlands Bureau.
 9. Within three days of final grading or temporary suspension of work in an area that is in or adjacent to wetlands or surface waters, all exposed soil areas shall be stabilized by seeding and mulching during the growing season, or if not within the growing season, by mulching with tack or netting and pinning on slopes steeper than 3:1.
 10. This permit is contingent upon the 15 ft wooded buffer along the proposed eastern stream bank.
 11. This permit is contingent upon the successful creation of 387 linear ft of intermittent stream channel in accordance with plans received January 3, 2003.
7. On May 26, 2004, DES personnel inspected the Property and observed the following:
 - a. The 15 ft buffer required by Condition # 10 was not planted;
 - b. Sod was being installed to protect the area from further erosion;
 - c. No erosion controls were present at the construction area;

- d. The fill to the west of the stream had several rills;
 - e. The side slopes of the new stream bank were not stable;
 - f. Fill in wetlands beyond the permitted locations were in place at Station 1 and 50 on the "Constructed Stream Channel As-Built Plan;"
 - g. 1-3 inches of sediment in the downstream channel for 25' was located.
8. On June 23, 2004, DES personnel inspected the Property and observed the following:
- a. Banks of the stream were still not stabilized; and
 - b. Buffer plantings still had not been done.
9. Also on June 23, 2004, DES personnel requested the following:
- a. Submit a plan showing limits of fill as existing;
 - b. Immediately stabilize banks adjacent to constructed stream channel;
 - c. Mulch remaining fill area;
 - d. Provide schedule for buffer plantings; and
 - e. Provide evidence of compliance of a-d by July 9, 2004.
10. On July 9, 2004, DES personnel inspected the Property and found the following:
- a. The stream banks were mulched and vegetation was growing;
 - b. The banks at the crossing site were not stable and needed sod or jute matting.
11. On July 20, 2004, DES personnel met with Mr. Chaille and Chris Danforth of Schauer Environmental to discuss the current status of the Property and a possible administrative fine by consent.

IV. ALLEGATIONS

- 1. Lochmere violated Wetlands Permit Condition # 1 by filling approximately 3,493 square feet of wetlands not authorized by the Wetlands Permit. Env- C 614.03(b) specifies a fine of \$1,000 for this violation.
- 2. Lochmere violated Wetlands Permit Condition #6 by failing to install appropriate erosion control devices. Env- C 614.05(h) specifies a fine of \$2,000 for this violation.
- 3. Lochmere violated Wetlands Permit Condition # 9 by failing to stabilize the side slopes of the constructed stream within 72 hours of final grading. Env-C 614.05(m) specifies a fine of \$2,000 for this violation.

V. ADMINISTRATIVE FINES, PAYMENT, WAIVER OF HEARING

- 1. Of the total \$5,000 fine sought, \$1,000 shall be suspended contingent upon the following:
 - a. Satisfactory planting of the 15' wooded buffer in accordance with Permit condition # 9

by May 1, 2005.

b. Stabilization of the stream banks with photographs documenting the stabilization by May 1, 2005.

c. An as-built plan showing retention of the fill in wetlands by June 15, 2005;

d. No further violations by Lochmere, its owners, employees and assignees for a period of two years from the date of this agreement.

2. Failure of Lochmere to comply with the terms of this Agreement shall render the suspended portions of the fine due and payable upon notice from DES, without opportunity for further hearing or appeal. If Lochmere fails to comply with the terms of the Agreement, DES reserves its right to consider referring this violation to the New Hampshire Department of Justice for imposition of civil and criminal penalties.

3. Lochmere agrees to pay the balance of the fine, in the amount of \$4,000, upon their execution of the Agreement.

4. Payments due under this Agreement shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and will be mailed to:

DES Legal unit
Attn: Michael Sclafani, Legal Assistant
PO Box 95
Concord, NH 03302-0095

5. If any payment is made by check that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

6. By executing this Agreement, Lochmere waives its right to a hearing on or any appeal of the administrative fines identified in Paragraph IV, 1- 3, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Lochmere, the Director the Water Division and accepted by the Commissioner of DES.

8. No failure by the DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.

WHEREFORE, the parties voluntarily accept the terms of this Agreement.

Lochmere Golf and Country Club, Inc.

COPY

By: Anne M. Chaille, President
Duly Authorized

2/23/05
Date

Department of Environmental Services

COPY

for Harry T. Stewart, P.E., Director
Water Division

3/2/05
Date

COPY

Michael P. Nolin, Commissioner

03 03 05
Date

cc: Gretchen R. Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
File #2002-1704